UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

NORTH PLAINFIELD BOARD OF EDUCATION, Plaintiff, v. ZURICH AMERICAN INSURANCE COMPANY, et al., Defendants.	CIVIL ACTION NO. 05-4398 (MLC) **O R D E R**
ZURICH AMERICAN INSURANCE COMPANY, Third-party Plaintiff, v. NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA., Third-party Defendant.	

THE COURT having issued a memorandum opinion and an order on May 15, 2008 ("5-15-08 Memorandum Opinion & Order") that, inter alia, (1) denied a motion for summary judgment by plaintiff, the North Plainfield Board of Education (the "Board"), (2) denied a separate motion for summary judgment by the Board, (3) granted a separate motion for summary judgment by defendant and third-party plaintiff Zurich American Insurance Company ("Zurich"), and (4) entered judgment in favor of Zurich and against the Board as to

all counts of the complaint (Dkt. entry nos. 93 & 94, 5-15-08 Mem. Op. & Ord.); and the Board moving for reconsideration of the 5-15-08 Memorandum Opinion & Order pursuant to Local Civil Rule 7.1(g) (dkt. entry no. 98); and

IT APPEARING that a motion for reconsideration is "an extremely limited procedural vehicle," Tehan v. Disab. Mgmt. Servs., 111 F.Supp.2d 542, 549 (D.N.J. 2000), and is granted "very sparingly," Yurecko v. Port Auth. Trans-Hudson Corp., 279 F.Supp.2d 606, 608 (D.N.J. 2003); and it appearing that its purpose is to correct manifest errors of law or present newly discovered evidence, Arista Recs., Inc. v. Flea World, 356 F.Supp.2d 411, 415 (D.N.J. 2005), or advise of "an intervening change in the law," P. Schoenfeld Asset Mgmt. v. Cendant Corp., 161 F.Supp.2d 349, 352 (D.N.J. 2001); and it appearing that reconsideration is not warranted where (1) the movant merely recapitulates the cases and arguments previously analyzed by the court, Arista Recs., Inc., 356 F.Supp.2d at 416, see Tehan, 111 F.Supp.2d at 549 ("Motions for reconsideration will not be granted where a party simply asks the court to analyze the same facts and cases it has already considered in reaching its original decision"), Auerbach v. Kantor-Curley Ped. Assocs., No. 01-854, 2004 WL 3037943, at *1 (E.D. Pa. Dec. 30, 2004) (noting that the motion is not to be used to relitigate old issues,

advance new theories, or secure a rehearing on the merits), or (2) the apparent purpose of the motion is for the movant to express disagreement with the Court's initial decision, Tehan, 111 F.Supp.2d at 549; and it further appearing that the movant must raise controlling facts or dispositive case law overlooked by the Court in rendering a decision, and concisely specify the suspect aspects of the decision with particularity, Ciba-Geigy Corp. v. Alza Corp., No. 91-5286, 1993 WL 90412, at *1-*2 (D.N.J. Mar. 25, 1993); and it appearing that such a motion should only be granted where facts or controlling legal authority were presented to, but not considered by, the Court, Mauro v. N.J. Sup. Ct., 238 Fed.Appx. 791, 793 (3d Cir. 2007); and

THE COURT having reviewed the Board's arguments in support of the motion for reconsideration; and the Board noting that the Court (1) granted, in part, the Board's motion for summary judgment in D & D Associates, Inc. v. Board of Education of North Plainfield (the "D&D Action"), and thus, the Court entered judgment in favor of the Board and against D & D Associates, Inc. ("D&D") as to count 1, count 5, count 6, count 7, count 9, count 11, count 15, and count 16 of D&D's amended complaint, see No. 03-1026 (MLC), dkt. entry nos. 264 & 265, 12-21-07 Mem. Op. & Ord., and (2) stated in the 5-15-08 Memorandum Opinion that the Court would not address the Board's arguments regarding whether

defendant National Union Fire Insurance Company ("National Union") was obligated to indemnify the Board against, and pay unlimited defense costs with respect to, those counts that are no longer pending against the Board in the D&D Action (dkt. entry no. 93, 5-15-08 Mem. Op., at 28-29 n.7); and the Board asserting that National Union did have "an obligation to defend the Board against the dismissed allegations from the moment they were filed by D&D, and that obligation was not abrogated by the dismissal of those allegations on summary judgment" (dkt. entry no. 98-2, Board Br., at 4; see id. at 6-7 (arguing that D&D's dismissed claims assert "Wrongful Acts" that fall within the coverage provisions of National Union's insurance policy, and no policy exclusions apply to these dismissed claims)); and the Board also asserting that the Court improperly concluded that the exclusion in National Union's insurance policy for claims "arising out of breach of contract" applied to the non-breach of contract claims asserted against the Board by D&D, P.J. Smith, and American Motorists Insurance Company ("AMIC") (id. at 8); and the Board arguing that (1) this Court erred by expansively interpreting the "arising out of breach of contract" exclusion, contrary to state law requiring narrow construction of policy exclusions, (2) a review of the National Union policy as a whole indicates that National Union did not intend the "arising out of breach of

contract" exclusion to be construed broadly, particularly when this exclusion is compared with other exclusions containing much broader language, and (3) the "arising out of breach of contract" exclusion does not apply to the "separately-alleged tort claims" because the allegations underlying these claims were "independently tortious" (id. at 8-17); and

NATIONAL UNION opposing the motion (dkt. entry no. 101); and National Union asserting that this Court concluded that the D&D Action constituted a single judicial proceeding or "Claim" subject to the "arising out of breach of contract" exclusion, and the Court would not have reached a different conclusion after fully considering those claims asserted in the D&D Action wherein judgment was entered in favor of the Board and against D&D (id., Nat. Union Br., at 3); and National Union further asserting that the Board is simply attempting to both "revisit the arguments advanced in its two motions for partial summary judgment, in addition to presenting new arguments that were available to them at that time" and voice its disagreement with the 5-15-08 Memorandum Opinion & Order (id. at 4); and

THE COURT having concluded that the D&D Action (1) constitutes a "Claim" under the National Union policy "because it is a judicial proceeding in which the plaintiff alleges that the Board committed several Wrongful Acts, including breaches of

duty, misstatements, and misleading statements or omissions", and (2) falls within the purview of the policy exclusion for Claims "arising out of breach of contract" contained in the National Union policy, and thus, National Union is not obligated to indemnify the Board with respect to the D&D Action but must appoint counsel and pay the Board's defense costs and related expenses up to the aggregate limit of $100,000 (dkt. entry no. 93, 5-15-08 Mem. Op., at 33-37 (explaining that "the 'arising out of breach of contract' exclusion, read in accordance with all relevant policy language, expressly provides that National Union is not obligated to indemnify the Board with respect to damages resulting from a judicial proceeding alleging a Wrongful Act, if such proceeding originated from, grew out of, or had a substantial nexus with breach of contract")); and the Court thus finding that its determinations with respect to National Union's duty to defend the Board in connection with the D&D Action would not have been altered had the Court fully considered those claims asserted in the D&D Action wherein judgment was entered in favor of the Board and against D&D; and the Court noting that the Board submitted a letter addressing certain arguments made by Zurich in light of the Court's memorandum opinion and order granting, in part, the Board's motion for summary judgment in the D&D action, and in that letter the Board only addressed Zurich's duty to

defend it with respect to claims that "survived" summary judgment in the D&D Action (dkt. entry no. 86, 2-28-08 Board Letter); and

THE COURT finding that the Board (1) has not established that facts or controlling legal authority were presented to, but overlooked by, the Court, see Mauro, 238 Fed.Appx. at 793, and (2) is merely recapitulating the arguments previously raised and asserting that it disagrees with the Court's decision, see Arista Recs., Inc., 356 F.Supp.2d at 416, Tehan, 111 F.Supp.2d at 549; and the Court having considered the matter without oral argument pursuant to Federal Rule of Civil Procedure 78(b) and Local Civil Rule 7.1(i); and the Court thus intending to deny the motion; and for good cause appearing;

IT IS THEREFORE on this 21st day of July, 2008, **ORDERED** that the motion for reconsideration by plaintiff, the North Plainfield Board of Education (dkt. entry no. 98) is **DENIED.**

s/ Mary L. Cooper
MARY L. COOPER
United States District Judge